

Virginia Government Competition Act of 1995

creating the independent Commonwealth Competition Council

The Virginia Government Competition Act of 1995 was enacted into law by the Governor and General Assembly. The following is the enabling legislation from the *Code of Virginia*:

§9-340. This chapter of the *Code* is known and may be cited as the “Virginia Government Competition Act of 1995.”

Definitions

§9-341. Three definitions are used in these sections of the *Code*, unless the context requires otherwise:

“*Council*” means the Commonwealth Competition Council.

“*Privatization*” means a variety of techniques and activities which promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.

“*State agency*” means any board, council, authority, department, agency, or institution of the Commonwealth which employs state or nonstate personnel.

Commonwealth Competition Council

§9-342. The Commonwealth Competition Council is created in the executive branch and:

- 1 Examines and promotes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advises the Governor, the General Assembly, and executive branch agencies of the Council’s findings and recommendations.
- 2 Develops an institutional framework for a statewide competitive program to encourage innovation and competition within state government.
- 3 Establishes a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without harming the public.
- 4 Monitors the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.
- 5 Advocates, develops and accelerates implementation of a competitive program for state entities to ensure competition for the provision or production of government services, or both, from both public and private sector entities.
- 6 Establishes approval, planning, and reporting processes required to carry out the functions of the Council.
- 7 Determines the privatization potential of a program or activity; performs cost/benefit analyses; and conducts public and private performance analyses. The Secretary of Finance independently certifies the results of the comparison.
- 8 Devises, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity which is subject to a privatization recommendation.
- 9 To the extent practicable and to the extent that resources are available, makes its services available for a fair compensation to any political subdivision of the Commonwealth.

All Council meetings are open to the public and are held across Virginia. Watch for meeting notices in the *Virginia Register of Regulations*, or call the office and ask to be put on the mailing list. Please join us.

Membership

§9-343. A. The Council has ten members:

- 4 employees of executive branch agencies
- 2 citizens from the private sector
- ~ ~ ~ APPOINTED BY THE GOVERNOR
- 1 member of the House of Delegates

1 citizen from the private sector

~~~ APPOINTED BY THE SPEAKER OF THE HOUSE

1 member of the Senate

1 citizen from the private sector

~~~ APPOINTED BY THE SENATE COMMITTEE ON PRIVILEGES AND ELECTIONS

B. Legislative members serve on the Council until the expiration of their terms of office or until their successors qualify. Others serve:

ONE YEAR TERM -- Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor.

TWO YEAR TERM -- Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor.

THREE YEAR TERM -- The nonlegislative members appointed by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections. Thereafter all nonlegislative members of the Council are appointed for terms of three years.

C. Appointments to fill vacancies are for the unexpired terms. No one is eligible to serve for or during more than two successive three-year terms. Executive branch agency members serve only as long as they retain their positions.

D. The Council annually elects its chairman and vice chairman from among its members.

E. Six members of the Council constitute a quorum. No action can be taken by the Council without the concurrence of at least six members. F. Legislative members are compensated as specified in §14-1-18 of the *Code*, and all members of the Council can be reimbursed for their actual expenses incurred in the performance of their duties.

Cooperation of other state agencies

§9-344. All agencies of the Commonwealth cooperate with the Council and, upon request, assist the Council in the performance of its duties and responsibilities. The Council does not impose unreasonable burdens or costs in connection with requests of agencies.

Staff support and application for and acceptance of gifts and grants

§9-345. A. The Council employs such staff as necessary to enable it to perform its duties as directed in the appropriation act.

B. The Council applies for, accepts, and expends gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity providing a gift, donation or grant is eligible for a contract award resulting from action of a Council recommendation.

Unsolicited proposals

§9-346. The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any service for which the Council has received a qualifying unsolicited proposal from a private entity which is consistent with the Council's purposes and duties as provided in §9-342.

Public/private performance analysis

§9-347. A. The Council uses the procurement methods cited in the Virginia Public Procurement Act (§11-35 et seq. of the *Code*) to solicit proposals and bids from private entities in order to make cost comparison decisions. However, the Council does not execute contracts.

B. The Council explores methods to encourage state agencies to compete for contracts.

Department of Planning and Budget

§9-348. The Department of Planning and Budget determines the amount of the existing appropriation no longer needed by the state agency or institution and unallots that funding. They also ensure that all appropriate reporting requirements to the Governor and the General Assembly are met. Nothing in this section precludes the Governor from recommending in future budget submissions the restoration of a portion of the original appropriation to the state agency or institution.

Reports to Governor and General Assembly

§9-349. The Council annually reports its findings and recommendations to the Governor and the General Assembly by December 1. The Council may make interim reports to the Governor and the General Assembly as it deems advisable.

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